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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	CR 8-0160 SI
Plaintiff,	)	RESPONSE OF THE UNITED STATES
v.	)	TO DEFENDANT’S MOTION TO
	)	VACATE OR CONTINUE RULE 15
JOHN J. COTA,	)	DEPOSITIONS
Defendant.	)	
_____	)	

The United States Attorney and the Assistant Attorney General for the  
 Environment and Natural Resources Division, by and through undersigned counsel,  
 hereby file this response to defendant Cota’s Motion to Vacate or Continue Rule 15

1 Depositions.

2 Rule 15 depositions of the material witnesses are scheduled to begin on July 21,  
3 2008. On July 3, 2008, the United States submitted an *ex parte* status report *under seal* to  
4 advise Judge Spero of certain developments, including newly discovered evidence, that  
5 could impact that schedule.

6 **I. Background**

7 Defendant John Cota was the pilot of the *M/V Cosco Busan* on November 7, 2007,  
8 when the ship hit a tower of the San Francisco Bay bridge causing more than 50,000  
9 gallons of oil to be discharged into the Bay and led to the death of approximately 2,000  
10 migratory birds.

11 Since January 3, 2008, the Master of the ship and five Chinese crew members have  
12 been detained in the United States as material witnesses pursuant to Title 18, United  
13 States Code, Sections 3142 and 3144.

14 Five of the material witnesses have moved for release or, in the alternative,  
15 depositions pursuant to Rule 15 of the Federal Rules of Criminal Procedure that were  
16 unopposed by the government and the defendant with respect to the request for  
17 depositions.

18 On May 21, 2008, the United States filed a motion seeking an order finding that  
19 exceptional circumstances and the interest of justice justify the taking of depositions  
20 pursuant to Rule 15. On May 22, 2008, this Court issued an Order setting the deposition  
21 dates in light of the new developments.

22 On July 3, 2008, the United States submitted an *ex parte* status report *under seal* to  
23 advise Judge Spero of certain developments, including newly discovered evidence, that  
24 could impact that schedule. The status report was ultimately filed on July 10, 2008. As  
25 set forth in greater detail in that status report, the purpose was to update the Court of  
26 current developments that may result in further delay of the depositions. The new  
27 evidence only came to light in May as the government was preparing for the Rule 15  
28 depositions. The government has been actively investigating new allegations since that

1 time and has provided Defendant Cota with discovery regarding the new investigation.

2 On July 9, 2008, after receiving the discovery, Defendant Cota moved to vacate  
3 the deposition schedule or, in the alternative, to continue depositions until early  
4 September 2008. (Doc. # 65). Defendant Cota has also moved *ex parte* for an order that  
5 would vacate the deposition dates and then either refer to Magistrate Judge Spero the  
6 defendant's motion to vacate or continue the depositions or shorten the time for this Court  
7 to hear that motion on an expedited schedule, and possibly as early as July 18, 2008, when  
8 Cota's dispositive motions are to be argued. (Doc. # 67).

9 On July 11, 2008, the material witnesses responded and opposed Cota's motion,  
10 however this pleading is not currently listed on the electronic docket.

## 11 **II. The Government's Position**

12 As set forth in defendant Cota's motion, the new discovery produced by the United  
13 States to the defendant relates to: (1) the knowledge and training of the Captain and crew  
14 of the M/V Cosco Busan in the operation of the electronic chart system and other aspects  
15 of bridge equipment and procedures; (2) the Captain's knowledge of how to interpret the  
16 symbols on the electronic chart; (3) the post-crash creation of records by certain crew  
17 members; and (4) recently produced computer images.<sup>1</sup>

18 While the government reserves its right to make evidentiary challenges and  
19 objections, the government agrees with the defendant's view that the information is  
20 relevant to preparation for the depositions and may constitute appropriate cross  
21 examination. The government agrees that a reasonable amount of time is appropriate in  
22 order to preserve the defendant's confrontation clause rights. And, for the reasons set  
23 forth in the government's *ex parte* status report filed under seal, there are additional  
24 reasons to believe that additional time will be required.

25 The government disagrees with the response of the material witnesses opposing  
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27 <sup>1</sup> The United States does not fully agree with defendant's characterization regarding the  
28 status and history of discovery. However, we fully anticipate that any discovery issues can be  
adequately resolved by the parties.

1 the defendant's motion, to the extent that the response asserts that the new evidence is not  
2 relevant to the depositions. The government is fully cognizant of the desire of the  
3 material witnesses to return home as soon as practicable, while at the same time  
4 preserving their testimony in a manner that preserves the right to a fair trial for the  
5 defendant. The government notes that several of these witnesses share responsibility for  
6 the eleventh hour disclosure of the new evidence and information, which only came to  
7 light in May and June. Indeed, as the government has now learned, several of these  
8 witnesses were not fully forthcoming when interviewed months earlier.

9 With regard to the defendant's requests, the government's position is as follows:

10 1. The United States does not oppose defendant's request for a reasonable  
11 continuance in the scheduling of Rule 15 depositions.<sup>2</sup>

12 2. The United States does not oppose defendant's request to vacate and referr the  
13 motion to vacate or continue to Magistrate Judge Spero or for the shortening of time so  
14 that this Court may hear that motion.

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27 <sup>2</sup> The government is opposed to keeping all of the material witnesses in the United States  
28 until trial as suggested by the defendant, but is not opposed to providing the defendant with  
further opportunity to brief this issue.

Respectfully submitted,

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/s/

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DATED: July \_14\_, 2008\_\_\_\_\_